IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

APPEAL FROM ORDER NO.370 OF 2005

M/s.Achalare Associates
through its Proprietor
Shri Rajendra Jinadatta Achalare ...Appellant

vs.

Ramesh S.Hansrajani & Ors. ...Respondents

CORAM: A.S.OKA,J.
DATE : MARCH 21, 2005.

P.C.:

1. Heard Shri Anturkar for the Appellant and Shri Madon for the Respondents. Appeal from Order is by unsuccessful Plaintiff challenging the impugned Judgment and Order dated 25th February 2005 passed by the learned Trial Judge by which application at Exh.5 made by the Appellant-Plaintiff has been rejected.

2. The suit is filed by the Appellant for specific performance of Memorandum of Understanding dated 26th November 2003. The learned Trial Judge has taken a view that the Memorandum of understanding being in the nature of development agreement cannot be specifically enforced in view of the law laid down by this Court and therefore no case was made out for grant of temporary injunction.

3. It is not in dispute that only a sum of Rs.1,00,000/- has been paid by the Appellant under the Memorandum of Understanding out of total consideration of Rs.2,71,00,000/-. It is not in dispute that there is no development carried out on the property in dispute.

4. Shri Anturkar for the Appellant submitted that on plain reading of the Memorandum of Understanding it is clear that the suit Agreement between the parties is not in the nature of development Agreement. He relied upon the Clause No.1 of Memorandum of Understanding in which an agreement is recorded that the Respondents have decided to sell, assign, convey and give for development the suit property. He also relied upon clauses 5 and 7 of the Memorandum of Understanding which read thus :

> 5) That the next set of documents shall be executed by and between the parties within a period of ---, provided that the title is absolutely clear in all respects, including the Government Demarcation, ULC Order declaring the holding of the Vendors herein is within the ceiling limit etc.. All the said compliances are to be complied with by the Vendors prior to the execution and registration of the abovementioned documents.
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> 7) The Purchaser shall have the right to develop and

construct the entire FSI available at present and in future in respect of the said lands and also the entire TDR benefits available at present or in future or any increase therein, and the Owners shall not demand any additional consideration for the same.

He submitted that the document cannot be obviously read as a development agreement as the same contemplates execution of further set of documents apart from execution of development agreement and power of attorney. He submitted that in view of clause 10 thereof, the document itself cannot be in nature of the development agreement.

5. I have considered the submissions. Merely because clause 1 refers to sale, assignment or conveyance, that by itself will not make the document as agreement for sale as distinguished from agreement for development. The entire Memorandum of understanding will have to be read as a whole. If clauses 4,7,10 and 12 are perused, it becomes crystal clear that the agreement between the parties was that the purchaser will have right of development. The Clause No.10 of development agreement provides that on happening of certain event, a development Agreement, a power of attorney and other supporting documents will be executed in favour of the purchaser. The Memorandum of Understanding read as a whole clearly reflects intention of the parties to grant only rights

of development in favour of the Appellant.

6. Prima facie I am in agreement with the tentative finding recorded by the learned Trial Judge that the Memorandum of Understanding is in the nature of the agreement for development and therefore, the suit for specific performance of such document is not maintainable. I find no fault with the impugned Judgment and order.

7. As the suit for specific performance is pending, it is obvious that all further actions and transactions in respect of the suit property are naturally subject to final result of the suit.

8. Appeal from Order is dismissed with no order as to costs.

9. It is obvious that the observations which are made by the learned Trial Judge while passing the impugned Judgment and Order are made for a limited purpose of deciding the prayer for interim relief. The Trial Court will obviously decide the suit uninfluenced by the prima facie findings recorded by the Trial Court as well as the by this Court in this Judgment.

10. Liberty to the parties to apply for expeditious hearing of the suit.

JUDGE.